

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING VERIZON'S
MOTION TO PLACE UNDER SEAL PORTIONS OF ORA'S
AUDIT REPORT AND AUDIT WORKPAPERS**

This ruling grants the motion filed by Verizon California Inc. (Verizon) to place under seal portions of the Office of Ratepayer Advocates' (ORA's) audit report and audit workpapers.

Background

The purpose of Phase 1 of this proceeding is to address issues associated with ORA's audit of Verizon. On January 22, 2002, ORA submitted its Phase 1 opening testimony that included, among other things, its audit report and audit workpapers. Because ORA's audit report and audit workpapers contain information that Verizon deems to be confidential, ORA submitted two versions of these documents. One version is unredacted and includes the information

that Verizon deems to be confidential. The other version is redacted and excludes the information that Verizon deems to be confidential.¹

On January 8, 2002, the assigned Administrative Law Judge (ALJ) issued a ruling that states "[a]ny party that seeks to place information into the record of this proceeding that was obtained from a utility, and the utility has designated the information as confidential, shall notify the utility as soon as possible." Once notified, the utility must file a motion as soon as possible in accordance with Resolution ALJ-164 to request that the information be placed under seal.²

ORA notified Verizon of its intent to place the unredacted audit report and audit workpapers into the record of this proceeding. In response to this notice, and in accordance with the ALJ's ruling, Verizon filed a motion on February 5, 2002, to have the unredacted audit report and audit workpapers placed under seal pursuant to the Public Records Act and General Order 66-C. Verizon represents the information it seeks to place under seal has never been disclosed to the public, and that public disclosure would cause irreparable harm. There was no response to Verizon's motion.

The information that Verizon seeks to place under seal falls generally into one of five categories. The first category consists of information about Verizon's costs and prices, such as the prices that Verizon charges its Internet affiliate for customer contact services, including unit prices, labor costs, insurance, pensions, and taxes. Verizon claims that disclosure of this information would place Verizon at an unfair business disadvantage by giving Verizon's competitors a

¹ The public and confidential versions of ORA's audit report and associated workpapers have been designated as Exhibit 103 and 103-C, respectively.

² ALJ Ruling at 2.

detailed snapshot of Verizon's cost and pricing structure. Verizon contends that this would undercut the ability of Verizon and its affiliates to negotiate successfully with third parties in competitive markets.

The second category of consists of financial information used in the development of cost allocation factors employed by Verizon's regulated and unregulated affiliates. This includes, for example, the income statements and balance sheets for Verizon Logistics Inc., and Verizon Data Services Inc. Verizon asserts that if the financial information and cost allocation factors were released to the public, it would place Verizon's affiliates at a competitive disadvantage. In particular, competitors could use this information to derive the profit margins of Verizon's affiliates, which could allow the competitors to determine the prices that the affiliates would be willing to accept in negotiations.

The third category consists of the terms and conditions of contracts between Verizon and its non-regulated affiliates. Verizon contends that public disclosure of this information would cause Verizon and its affiliates to suffer unfair business hardship, since Verizon's competitors, armed with the rates, terms, and conditions to which Verizon had already agreed, would be unlikely to accept any terms that were less favorable to them. Verizon also believes that if third parties knew the terms and conditions to which Verizon's affiliates had agreed, these third parties would gain insight into the affiliates' cost and pricing structures. This would give the third parties an unfair advantage in negotiations, resulting in substantial financial harm to the affiliates.

The fourth category consists of information pertaining to research and development. For example, the audit report contains project summaries of research conducted at Verizon Laboratories Inc. (formerly, GTE Laboratories

Incorporated (GTE Labs)). Verizon states that the projects constitute proprietary trade secrets within the meaning of Civil Code § 3426.1.

The final category consists of what Verizon calls "private information" about its employees, such as social security numbers. Verizon states that private personal information is protected from disclosure under Article I, Section 1 of the California Constitution.

On March 7, 2002, the assigned ALJ sent three e-mails to Verizon. In the first e-mail, the ALJ noted that Footnote 17 on page 8 of Verizon's motion contains a reference to Exhibit 1-7 in the unredacted Volume 2 of ORA's audit report. The ALJ stated that there did not appear to be an Exhibit 1-7 in Volume 2. Verizon responded via e-mail on March 7, 2002. In its response, Verizon stated that Footnote 17 should have referenced Exhibit 6-7, not Exhibit 1-7.

In the second e-mail, the ALJ wrote:

Verizon's motion for a protective order . . . suggests that Exhibit 6-7 contains employees' social security numbers. While the Exhibit does contain 9-digit employee numbers, most of the numbers do not appear to be social security numbers . . . Could you please verify whether the employee numbers are indeed social security numbers.

Verizon responded as follows on March 8, 2002:

The columns designated as employee numbers on Exhibit 6-7 contain actual employee social security numbers and fictitious social security numbers that are used as place holders for vacant positions. The three employee numbers listed on page 2 of 4 are actual employee social security numbers, and the first three employee numbers listed on page 4 of 4 are actual employee social security numbers. The other employee numbers listed on Exhibit 6-7 are fictitious . . . Verizon does not consider these fictitious numbers to be confidential.

In the third e-mail, the ALJ wrote the following:

Verizon states [in] its motion...that it seeks to keep confidential the project summaries of research conducted at Verizon Laboratories Inc. The motion states that the projects constitute classic proprietary trade secrets within the meaning of Civil Code Section 3426.1, which defines a "trade secret" as "information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

I am having trouble finding in the project summaries any "formula, pattern, compilation, program, device, method, technique, or process." Therefore, I would appreciate Verizon identifying the specific trade secrets contained in the project summaries. For example, Verizon could provide a version of the project summaries that has been marked or annotated in a way that identifies the trade secrets.

Verizon responded as follows on March 12, 2002:

At the time Verizon personnel were providing information to the auditors, they made an informed decision that the project summaries were confidential. In response to your e-mail, [Verizon has determined that] due to the passage of time, the project summaries [may] be released to the public.

On March 21, 2002, Verizon requested permission via e-mail to supplement its motion with additional information that describes "with particularity the identity and location (e.g., volume and page) of the information [in ORA's audit report] for which confidential information is sought, and the

rationale for that treatment." There was no opposition to Verizon's request, and it was granted by the ALJ via e-mail on March 21, 2002.

Verizon submitted the supplement on April 16, 2002. The supplement included a 53-page spreadsheet that identifies and describes the exact portions of ORA's audit report that Verizon seeks to place under seal and the rationale for doing so. There was no response to Verizon's supplement.

Discussion

As set forth in the ALJ ruling issued on January 8, 2002, the Commission will not grant requests to place information under seal unless all of the following criteria are satisfied:

- The information the utility seeks to place under seal has been kept confidential by the utility and is not available to the public.
- Disclosure of the information would cause substantial and irreparable harm to the utility.
- The harm that would be caused by disclosure of the information outweighs the public interest in disclosure.

Verizon has met its burden to demonstrate that most of the information it seeks to place under seal satisfies all of the above-mentioned criteria.

Accordingly, Verizon's motion to place portions of ORA's audit report under seal is granted with two exceptions. The two exceptions, which are set forth in the e-mail correspondence described previously, are (1) the fictitious social security numbers, and (2) the summaries of research and development projects.

Therefore, **IT IS RULED** that:

1. The motion filed by Verizon California Inc. (Verizon) to place portions of the Office of Ratepayer Advocates' (ORA's) audit report and audit workpapers (i.e., Exhibit 103-C) under seal is granted as set forth in the body of this ruling.

2. Verizon shall work with ORA to produce and submit revised pages of the public edition of ORA's audit report and audit workpapers (i.e., Exhibit 103) that contain newly public information as set forth in the body of this ruling. The revised pages shall be collectively labeled as Exhibit 103-S.

3. Verizon shall provide a copy of Exhibit 103-S to other parties in this proceeding upon request.

4. Exhibit 103-C, as revised by this ruling, shall remain under seal for a period of two years from the date of this ruling. During that period, Exhibit 103-C shall not be made accessible or disclosed to anyone other than Commission staff except (i) on further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the ALJ then designated as Law and Motion Judge, or the Chief ALJ, or (ii) as may be required by law, or (iii) with the written permission of Verizon.

5. If Verizon believes that Exhibit 103-C should remain under seal after two years, it may file a motion that states the justification for further withholding of Exhibit 103-C from public inspection or such other relief as the Commission's Rules may then provide. The motion must be filed at least 30 days before the expiration of this ruling.

Dated May 22, 2002, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Verizon's Motion to Place Under Seal Portions of ORA's Phase 1 Testimony, Audit Report, and Audit Workpapers on all parties of record in this proceeding or their attorneys of record.

Dated May 22, 2002, at San Francisco, California.

/s/ JACQUELINE GORZUCH
Jacqueline Gorzuch

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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